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BY ECF

Honorable Laura Taylor Swain
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *Nunez, et al. v. City of New York et al.*, 11-cv-5845 (LTS)

Dear Chief Judge Swain:

Defendants, the City of New York (“City”) and Department of Correction (“DOC” or “the Department”) (collectively “defendants”), write to provide the Court with an update in advance of the Status Conference on August 10, 2023.

While there has been demonstrable progress since the beginning of Commissioner Louis Molina’s tenure, Defendants recognize that there is still work to be done to achieve the reforms that are required by the Consent Decree and related Court Orders. Defendants acknowledge the concerns in the Monitor’s status reports submitted on July 10, 2023 (Dkt. 557) (“July Report”), and August 7, 2023 (Dkt. 561) (“August Report”). However, it is also true that the Department continues to drive meaningful improvements. The Monitor’s April 3, 2023 Status Report (Dkt. X) (“April Report”), noted that “the Department has made appreciable progress in managing its uniform staff and untangling the dysfunctional staffing practices that have been entrenched for decades. [Its] efforts to date have already begun to improve practice and certainly suggest the Department is in a position to revise the poor practices of the past and create sustainable progress going forward.” April Report at 11. As discussed below, this assessment remains true.

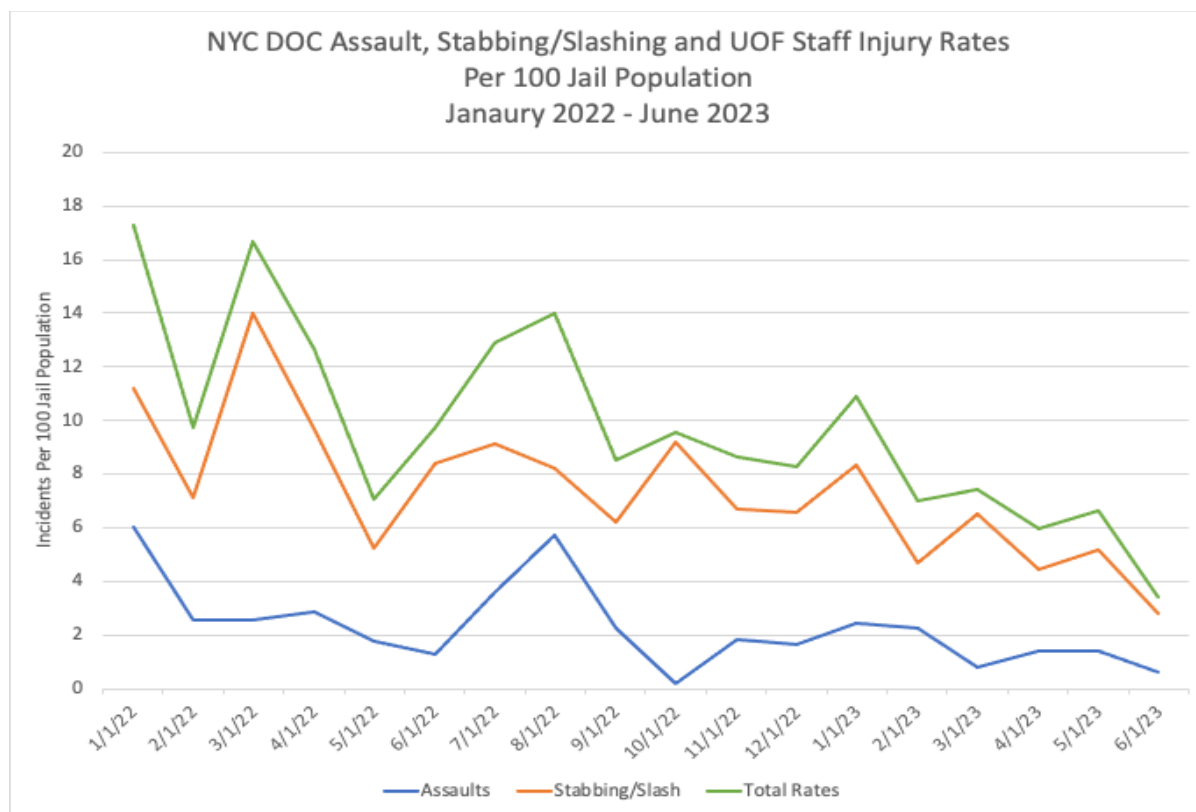
Defendants remain committed to the core goal of the Nunez Consent Judgment: achieving safety and security for all of those who are in the Department’s custody. As demonstrated by the following examples, the Department has unquestionably made progress toward achieving the goals of the Nunez Consent Judgment.

Reductions in Violence and Use of Force:

As demonstrated by the below statistics, the City's jails are safer today than they were on December 31, 2021.

- There were 237 slashings/stabbings in the six months between July 1, 2021, and December 31, 2021. That number was 164 in the six months between January 1, 2023, and June 30, 2023, a 31 percent decline. Correspondingly, serious injuries to incarcerated individuals (SITI) have declined 39% comparing the two periods.
- Slashings/stabbings decreased most precipitously in the Robert N. Davoren Center ("RNDC"), which houses DOC's youngest detainees and where Commissioner Molina first concentrated the Department's efforts. There were 82 slashings/stabbings there in the last half of 2021 and 28 in the first half of 2023, a 66 percent decline.
- Since early 2022, DOC has followed best correctional practices by not allowing any one gang to control a housing unit. Blended housing units initially led to a spike in slashings/stabbings in the George R. Vierno Center ("GRVC"), which houses DOC's most violent adult offenders, but the numbers have now declined sharply. There were 102 slashings/stabbings at GRVC in the last six months of 2022 as compared to 46 in the first six months of 2023, a 55 percent decline.
- Overall use of force numbers have dropped from 3,837 between July 1, 2021, and December 31, 2021, to 3,237 between January 1, 2023, and June 30, 2023, a 16 percent decline. Total uses of force, however, is not the most meaningful measure. Any time an officer makes contact with an incarcerated individual to compel behavior it counts as a use of force, no matter how slight the contact. The more significant metric is uses of force that result in injury to an individual (Use of Force Class A and B). In the period July 1, 2021, to December 31, 2021, the number of Class A uses of force, the most serious, was 218. In the six months between January 1, 2023, and June 30, 2023, the number declined to 93, a 57 percent reduction. Class B uses of force, pertaining to incidents which do not require hospitalization or medical treatment, have also declined from 427 to 241 during the same periods, a 44 percent decrease.
- In the period July 1, 2021, to December 31, 2021, there were 1,239 Assaults on Staff; from January 1, 2023, to June 30, 2023, the number was 713, a 42 percent reduction.

The Department's *Nunez* consultant, Dr. James Austin, has prepared this graph of recent trends, which provides a compelling summary:



Leadership:

A significant development this past spring was the infusion of new leadership from outside the Department. This has long been a goal of the Monitor and was achieved after the Court entered an Order in December 2022 “permit[ting] the Department to hire facility leadership at the Warden level from outside the Department’s current ranks.” Four of the newly appointed leaders now oversee four of the Department’s facilities: the Robert N. Davoren Center (“RNDC”), the Vernon C. Bain Center (“VCBC”), the Rose M. Singer Center (“RMSC”), and the Otis Bantum Correctional Center (“OBCC”). The new Assistant Commissioner at RNDC worked for 23 years with the Federal Bureau of Prisons, most recently as the Warden of the Metropolitan Detention Center in Brooklyn. The new Assistant Commissioner at VCBC has 23 years of experience in the Connecticut Department of Correction, beginning there as a correction officer and rising to Warden. The new Assistant Commissioner at RMSC has 20 years of experience in the Las Vegas correctional system, also starting as a correction officer and rising to Deputy Chief overseeing the Department’s security and training. The new Assistant Commissioner for OBCC has 30 years’ corrections experience, rising from a correction officer to oversee the daily operations of Alabama’s 23 male facilities.

¹ This chart is discussed further in the declaration of Dr. Austin, which is attached hereto.

New leadership has been added throughout the Department and not just in the facilities. Recently, a new Deputy Commissioner for Facility Administration and Management with 20 years of experience; a Deputy Commissioner of Health Affairs who has worked on health care issues for 36 years; and a Deputy Commissioner of Training who has 25 years of experience have joined the Department's leadership team. These hires bring fresh insight to the Department and reflect the Department's commitment to addressing infrastructure and facilities, a commitment to ensuring that individuals, many of whom have serious health problems, receive much needed care, as well as further commitment to training officers in best correctional practices.

Intake:

The Monitoring Team notes that there has been "progress with respect to improving the physical conditions in Intake Units and efficiently processing individuals through intake," but reports that it "is not confident about the veracity or durability of these results or that the dangerous conditions have been fully ameliorated." Rpt. at 120. We respectfully disagree.

Beginning in early January 2023, DOC has made significant improvements in its new admission intake process and has trained staff on the use of its intake dashboard. An Assistant Deputy Warden and a Captain have been assigned each shift to supervise the intake process. From early January 2023 to mid June, as reported in Deputy Commissioner Miller's most recent affidavit, there were 8,208 individuals (men and women) admitted to DOC custody, and only 46 have exceeded the 24-hour requirement for court to housing. That is 99.5% success rate. Moreover, the Nunez Compliance Unit ("NCU") has conducted 13 audits of intake at the Eric M. Taylor Center ("EMTC"), where male detainees are admitted. Those audits confirm that there is no evidence of data manipulation.

DOC uses the Inmate Tracking System ("ITS") system to track the movement of individuals between facilities (from RNDC to GRVC) and between housing units within a facility (from GRVC 7B to 9A). The average time for such transfers is less than six hours. While data entry for such transfers remains less than perfect (in the 10 days from July 10 to July 20, 2023, it varied from 78 percent to 92 percent of transfers being properly entered), DOC has developed a robust support system, which employs a team of five officers, to ensure that no one is languishing in intake.

The Monitor notes that "uses of force in intake units has decreased slightly over the past few months." Rpt. at 33. We respectfully submit that the progress made here has been more significant. There were 963 uses of force in intake in 2022 and 309 in the first five months of 2023. Extrapolating the five months to twelve ($309/5 \times 12$) indicates that there has been a 23 percent decrease in use of force incidents in intake units from 2022 to 2023. With respect to the more serious Class A and B uses of force, in the last six months of 2021, there were 19 class A uses of force in intake areas and 91 Class B uses. In the first six months of 2023, the corresponding numbers were 12 and 18. Viewing the two classes together, that is a 72.7 percent decline in serious uses of force in intake units.

Moves to RESH and OBCC:

In February of this year, in consultation with the Monitor and Dr. Austin, the Department opened a new restrictive housing program in GRVC. The Action Plan required the Department to develop a housing and management strategy that would safely and adequately manage those Persons in Custody that have engaged in serious acts of violence and pose a heightened security risk to the safety of other individuals and staff. This past June, the Enhanced Supervision Housing (ESH) unit was moved from GRVC to the Rose M. Singer Center (“RMSC”) (hence the name RESH). The move increased bed capacity and created a more secure environment for those who have recently engaged in acts of violence. RESH reflects an understanding that a meaningful deterrent is necessary to reduce violence and that rehabilitative programming must be a major part of any such effort.

Additionally, as of this month, AMKC has closed, and the majority of its detainees have been moved to OBCC. The Department determined that this move was necessary to reduce violence that had been occurring at AMKC. Specifically, unlike at RNDC and GRVC, violence at AMKC did not decline in 2022 and 2023.

The Department determined that a principal reason for the lack of progress at AMKC was that cell doors there did not properly close. Defective doors are an open invitation to violence. At RNDC, the Department completed an ambitious program to install 900 new cell doors, but the installation took time. Rather than install new cell doors at AMKC (for which it was given \$10 million but could take years), the Department chose to move individuals to OBCC, where the doors are intact. OBCC also has far better lines of sight throughout the facility, which should improve security as well. Rather than be destabilizing, the move to OBCC promises to help solve a problem – violence at AMKC – that has proven intractable.

Staffing & Training:

In 2021, the words most frequently associated with Rikers Island were “staffing crisis”. What was true then is no longer true now. In January 2022, the average number of officers out sick was 2,096. In June 2023, this number was 449, a 78 percent reduction from January 2022. On average, 7.4 percent of staff are now out sick on a day as compared to 28.7 percent in January 2022. Importantly, getting officers to return to work has meant a substantial reduction in triple tours. In January 2022, 1,237 officers worked a full or partial third tour, with 756 working more than 3.75 hours on the third tour. In June 2023, the number was reduced to 152, with only 26 working more than 3.75 hours on the third tour.

This dramatic turnaround is attributable to the improved management of the Department’s Health Management Division (HMD), to changes in policies, and to concerted efforts to hold staff accountable for abuses of sick leave and modified duty.

The Department has been making efforts to increase staff skill and experience via an extended Field Training program for newly hired Correction Officers. The Monitor has recognized that, while these individuals may not yet have tenure, this is one way that the Department is trying

to increase the number of staff with the requisite skill to solve problems and supervise effectively. (July Report at 82-83).

The Department has further worked to implement scheduling software for staff in 6 facilities, RNDC, GRVC, EMTC, NIC/WE, and RMSC. This system will enable the consolidation of several different staff schedules to maximize deployment of uniform staff and reduce overtime expenditures. The continued operation of the Schedule Management and Redeployment Team has enabled the Department to identify mandatory posts and gaps in staff deployment across facilities to improve security and supervision.

Investigations:²

The Monitoring Team raised concerns about the work of the Investigation Division in late 2022, which led to a change in the Division's leadership. Notably, in its April 3, 2023 report, the Monitor emphasized that "the change in ID's leadership (at the end of March 2023) is expected to mitigate any further decline in the quality of investigations and to restore the divisions compliance." Rpt. 4/3/03 at 101-02.

We respectfully submit that the Monitor's expectations have been fulfilled. Recently the following changes have been made: (i) two Rapid Review teams, each comprised of four investigators and a supervisor, conduct an assessment of all UOF incidents within hours of their being reported to determine if immediate disciplinary action should be taken against any officer, with special attention to incidents involving ESU; (ii) the Director of Full ID investigations reviews cases referred for full investigation daily to provide guidance to investigators on actions to be taken; (iii) Full ID investigators meet with their supervisor and a Deputy Director five days after being assigned a case to develop an investigative plan; and (iv) extensive training has been conducted on completing objective investigations and preparing comprehensive reports.

Since March 2023, an Intake Quality Assurance Team has been established to audit 30 intake investigations each week on a random basis to ensure that no case is being closed erroneously. The Team is comprised of a Senior Investigator, a Supervising Investigator and an experienced attorney. As of mid-July, 414 cases have been audited, and no substantial error has been identified. Similarly, the Director of Full ID audits five Full ID cases each week that have been closed without charges. As of mid-July, 22 such cases have been audited, and all have passed scrutiny.

Staff Discipline:

As noted in the Monitor's July Report, since January 2022 "[c]ase processing within the Trials Division has improved with the reduction in the backlog [. . .] streamlined internal processes, increased capacity at OATH, and enhanced staffing levels." July Report at 134. Since the inception of the Action Plan, the Department has expedited the processing of the most egregious misconduct

² The Investigation Division is divided between an Intake unit and a Full ID unit. The former does an initial review of cases to determine if they can be closed without further investigation; the latter conducts further investigation when needed.

cases and resolved the majority with close-in-time discipline. It has eliminated the backlog of use of force disciplinary cases for incidents that occurred prior to December 31, 2020, and is now working toward closing the backlog of cases that occurred between January 1, 2021, and June 30, 2022. That goal should be accomplished this summer. Moreover, between January 2022 and May 2023, the Department closed 2,441 cases involving UOF-related discipline, and the number closed in 2022 (2,163) was nearly the same as in the previous five years combined (2,225). Significantly, the Monitor reports that it “has not identified an overall negative impact on the appropriateness of the dispositions given the large number of closures.” (*Id.* at 136). This data demonstrates that the Department is committed to holding wrongdoers accountable.

Communication with the Monitoring Team:

Defendants recognize that there had been breakdowns in communication with the Monitoring Team, which led to the appointment of a Nunez Manager in June 2023. Since then, as noted in the Monitor’s July 10th Report, the Nunez Manager has “helped to improve the facilitation of information to the Monitoring Team.” (*Id.* at 165). In addition, the Monitor has “unencumbered, direct access to communicate with and seek information from all Department leadership and staff,” as well as “to have confidential communications with Department leadership and staff outside the presence of other Department personnel” as required by paragraph 5 of the Court’s June 13, 2023, order. The Department is committed to improved communications with the Monitoring Team, and has increased its open communication with the Monitoring Team through the appointment of the Nunez Manager. In this regard, Defendants overall responsiveness is reflected by the immense amount of data and information shared with the Monitor. The following is a snapshot of the Department’s engagement with the Monitor:

- The Department’s Legal Division provides the Monitoring team with over 30 reports on a routine basis (month, bi-weekly, or weekly); NCU provides 40 or more reports monthly; and the Training Academy provides 5 reports monthly.
- The Monitoring Team has frequent calls with various DOC leaders. In May and June, it had two calls with the Deputy Commissioner of Investigation; it had four calls with the Deputy Commissioner of Security; it had two calls with the Assistant Commissioner of the Early Intervention Support and Supervision (“EISS”) unit; it had three calls with the Deputy Commissioner of Trials; it had tri-weekly half hour calls with the Deputy Commissioner of Facility Operations; it had one call with the Deputy Commissioner of Health Affairs; it had three calls with the Assistant Commissioner of the NCU; and it had one call with the Deputy Commissioner of Training. Since her appointment, the Nunez manager has spoken with the Monitoring Team daily on workdays.³

Defendants’ intent in submitting this letter is not to gloss over the shortcomings that the Monitoring Team has identified. The examples that it provides are disturbing, and many of its

³ The Monitor raises a concern that the Department’s Legal Division reached out to stakeholders to gather the information in this paragraph. What occurred was a one-time effort to gather facts; it was not meant to, nor to our knowledge did it, chill communications between stakeholders and the Monitor, which have continued unabated.

criticisms are valid. Much work needs to be done. Rather, we submit this letter to highlight that conditions have not deteriorated since April 3, 2023 and to reemphasize the City's commitment to continuing to make steady progress to achieve sustainable reforms.

We thank the Court for its consideration of this matter.

Respectfully submitted,

/s/

John Schemitsch

cc: BY ECF
All counsel of record